IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 1768 OF 2005

Shri Eknath B.Pisal. ..Appellant.

V/s.

Special Land Acquisition Officer
No.19, Satara & Anr. ..Respondents.

Mr.Dilip Bodake for appellant.

Mr.S.N.Gawade, AGP for respondent.

CORAM: A.M.KHANWILKAR,J

DATE : JANUARY 20, 2006.

P.C. :

1. Heard counsel for the parties.

2. Admit. Learned Counsel for the respondent waives notice.

3. As short question is involved, appeal is taken up for hearing forthwith by consent.

4. This appeal takes exception to the award passed by the I Ad-hoc Additional District Judge, Satara dated February 14, 2005 in Land Reference no. 2 of 1999 (old L.R.No. 35 of 1994). The land in question which has been acquired by the respondent is land bearing Gat No.239 admeasuring 1 hectare 20R.

and 3R. Potkharab land. The land is situated at village Shirval, Taluka Khandala. The appellant claims to have 0.5 share in the said land. The land is acquired for Krantisiha Nana Patil College of Veterinary Science Project, Shirval, Satara. After commencement of acquisition proceedings on issuance of notice, vide Award dated 3rd April, 1991 the SLAO, Satara fixed the market price of the land at the rate of Rs.36,000/- per hectare and for Potkharab land at the rate of Rs.2 per R. land. Being aggrieved by the said award the appellant as well as other claimants filed application before the Collector to forward their reference to the courts for enhancement. The said application was however, not processed by the Collector on the ground that the same was barred by limitation. As a result of which, appellant and similarly placed claimants filed writ petitions before this court. The appellant had filed Writ Petition No. 3449 of 1993 for the following reliefs.

> "(a) Records and proceedings be called for and rule be issued.
>
> (b) Issue an appropriate writ, order or direction directing the respondent No.1 to make reference under sectuion 18 of the Land Acquisition Act, 1894, by condoning the delay and respondent No.1 may hold fresh enquiry for determination of the rate of compensation;
>
> (c) That the award passed by the respondent

No.1 on 3.4.91 may kindly be quashed and set aside and the matter be remanded for fresh enquiry and determination of rate of compensation.

(d) Pending the hearing and final disposal of this Writ petition, respondents be directed to deposit a reasonable amount which this Honourable Court may deem fit and proper and the petitioner be allowed to withdraw the same by furnishing security.

(e) Any such other and further order may kindly be passed in favour of the petitioner."

The said writ petition alongwith the companion writ petitions was heard by the Division Bench of our High Court on 19th January, 1994; when all these companion writ petitions were allowed and the petitioners in the respective petitions were given liberty to file fresh applications under section 18 of the Act within six weeks from the date of the order while holding that there was no delay in making earlier application by the concerned petitioners. The said order reads thus:

". Rule, returnable forthwith. Mr.Gokhale, learned Assistant Government Pleader, waives service for the respondents. By consent, petitions placed on Board and called out for hearing.

2. Being aggrieved by the decisions rejecting the application for reference under Section 18 of the Land Acquisition Act(‘Act’, for short) the present writ petitions have been filed.

3. In view of the law laid down by this Court in Keshav Dattu Patil v..The State of Maharashtra (AIR 1978 Bom.289) and followed by the Division Bench of this Court in Writ Petition No.646 of 1987 decided on 27th November, 1992, the present writ petitions must also succeed. In the present cases there is no delay in making the applications under Section 18 of the Act and the Officer had erred in returning the applications on the ground that they were barred by limitation.

4. In the above circumstances, each petitioner will file his/her application under Section 18 of the Act within six weeks from today and thereupon the Land Acquisition Officer is directed to make a reference under Section 18 of the Act to the appropriate Civil Court in accordance with law.

5. Rule in each of these petitions is made absolute in the above terms. No order as to costs.

6. Issuance of certified copy of this order is expedited."

5. Suffice it to observe that the Division Bench of this court in writ petitions between the same parties accepted the contention of the appellant that the application preferred by the appellant under section 18 was within time and the reference ought to have proceeded on merits in accordance with the law. After this decision, the appellant, within six weeks as was granted by the Division Bench of this court, filed necessary application on 20th February, 1994. The said application was placed before the District Court as Land Reference No. 35 of 1994. After considering the evidence adduced by the parties on record, the District Court has accepted the claim of the appellant that the market price of the land in question should be determined at Rs. 1,80,000/- per hectare and for pot kharab land. Accordingly, so far as the claim for enhancement is concerned, the same has been accepted by the District Court under the

impugned judgment. The reference court has also awarded 30% solatium to the appellant on the enhanced market price of Rs. 20,160/- which comes to Rs.6,048/- and additional interest at the rate of Rs.9% per annum and 15% per annum for the first and subsequent years on the market price of Rs.20,160/- in terms of section 28 of the Act. However, reference has been dismissed by the District Court on answering the issue of limitation against the appellant. The Reference Court has noted that the award was passed on 3rd April, 1991 and notice under section 12(2) of the Act is dated 17th May, 1991, whereas the application was filed on 28th February, 1994. The argument of the appellant that, the reference which has been filed on 28th February, 1994 is within limitation in view of the decision of the Division Bench of this Court between the parties, has not been accepted by the reference court on the reasoning that the appellant did not produce any document to show that he was party to the stated writ petition on which reliance was placed. Accordingly, the reference came to be dismissed by the impugned order on 14th February, 2005 which is the subject matter of the appeal before this court.

6. At the outset it is relevant to note that the

respondent has not challenged the correctness of the findings recorded by the Reference Court accepting the appellant's claim for enhancement. Therefore, this court will have to accept that part of the judgment, while setting aside the opinion recorded that the reference was barred by limitation, if the appellant is right in that contention.

7. The limited question that arises for consideration before this court is whether the reference application preferred by the appellant on 28th February, 1994 was within limitation. Ordinarily, there would have been no difficulty in accepting the conclusion reached by the District Court in the impugned judgment that application was barred by limitation as the same was filed on 28th February, 1994, as the award was passed on 3rd April, 1991 and notice under section 12(2) is dated 17th May, 1991. That is the correct legal position as stated by the Reference Court. The counsel for the respondents has placed reliance on the decision of the Apex Court reported in **1996 Mh.L.J. page 609 in the case of Officer on Spl.Duty vs.Shah Manilal Chandulal,** to support the view taken by the Reference Court on the point of limitation that section 5 of the limitation act cannot be applied for extension of period of

limitation prescribed under proviso to subsection 2 of section 18 of the Land Acquisition Act in the matter of reference under section 18.

8. However, what is overlooked in the process by the counsel for the respondent is that, there is already a decision of the Division Bench of this court on the question of limitation between the parties in respect of the self same land and award dated 3rd April, 1991. The Division Bench of this court on 19th January, 1994 accepted the claim of the appellant that there was no delay in making application under section 18 of the Act; though the respondents had contested the said position. Thus understood, the finding in the earlier proceedings between the same parties in relation to the same award will be binding on the respondents. It was therefore, not open to the Reference Court to hold to the contrary. Presumably, therefore, the Reference Court non-suited the Appellant on the ground that the appellant failed to produce any document to show that he was party to the writ petition in which order came to be passed by the Division Bench of this court on 19th January, 1994. To address the difficulty expressed by the Reference Court in this regard, when the appeal came up for admission on 3rd October, 2005, this Court after

hearing both the sides granted liberty to the appellant to produce certified copy of the Writ Petition No.3449 of 1993, in which the award in question was put in issue. The appellant has produced certified copy of the memo of Writ Petition No. 3449 of 1993, which is taken on record in view of the liberty already granted. On perusal of the certified copy of the said Writ Petition No.3449 of 1993, it is seen that the very award dated 3rd April, 1999 was put in issue by the appellant before this Court. This Court allowed the said Writ Petition No. 3449 of 1993 by decision dated 19th January, 1994 passed by the Division Bench. I have already adverted to the complete text of the decision dated 19th January, 1994, wherein it is clearly indicated that the stand of the appellant that there was no delay in filing of the application under section 18 has been accepted and the appellant was granted liberty to file fresh application within six week from the date of the said order, which the authority was bound to process and to be heard as reference under section 18 of the Act on merits in accordance with the law.

9. Viewed in this perspective, the conclusion reached by the court below cannot be sustained in the fact situation of the present case. The same will

have to be set aside and instead it will have to be held that the application filed by the appellant on 28th February, 1994 challenging the Award dated 3rd April, 1991 was within limitation in terms of order dated 19th January, 1994 passed by the Division Bench of this Court in Writ Petition No.3449 of 1993. Accordingly, this appeal succeeds. The same is allowed by passing the following order.

10. Reference application is allowed on the terms accepted by the lower court. The appellant is entitled for enhanced rate of compensation at the rate of Rs.1,80,000/- per hectare, market price of 14R. land held by the appellant would come to Rs.25,200/-. Accordingly, the appellant would be entitled to enhanced market price of the land being Rs.20,160/- i.e. enhanced market price for 14R.Land of Rs.25,200/- minus the market price determined by SLAO being Rs. 5040/- in respect of the said land. The appellant is also entitled for 30% solatium on the enhanced market price of Rs.20,160/- which comes to Rs.6,048/-. In addition, appellant would be entitled for interest at the rate of 9% p.a. and 15% p.a. on the market price of Rs.20,160 in terms of section 28 of the L.A.Act. Award be drawn up accordingly. Appeal allowed on the above terms. No order as to

costs.